CHIN WAI LEONG & ORS v. PP & OTHER APPLICATIONS

COURT OF APPEAL, PUTRAJAYA
YAACOB MD SAM JCA
MOHAMAD ZABIDIN DIAH JCA
YEW JEN KIE JCA
[CRIMINAL APPLICATIONS NO: W-06-1-01-2018, W-06-2-01-2018, W-06-3-03-2018 & W-06-4-03-2018]
12 APRIL 2019

CRIMINAL PROCEDURE: *Sentencing – Review – Review of Court of Appeal's decision – Review of own decision – Applicants found guilty of 224 charges under Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLATFA') – Prosecution later withdrew 70 charges – Appeal Panel varied earlier conviction from 224 charges to 154 charges under AMLATFA and passed sentences accordingly – Whether earlier order of conviction drawn out and perfected – Whether earlier conviction final order – Whether amendment to conviction on charges could be done – Whether court functus officio – Whether conviction and sentences safe and valid*

The applicants, the directors of Geneva Sdn Bhd, were charged at the Sessions Court (i) under the Banking and Financial Institutions Act 1989 ('BAFIA') for receiving deposits from the public without a licence; and (ii) with a total of 224 charges under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLATFA'). However, the Sessions Court Judge discharged and acquitted the applicants of all the charges under the BAFIA and the AMLATFA. The respondent ('prosecution') filed an appeal to the High Court against the said decision but the appeal was dismissed. The prosecution appealed to the Court of Appeal and, on 12 December 2017, the Appeal Panel allowed the appeal; the applicants were found guilty of all the charges under the BAFIA and the AMLATFA. When the hearing of mitigating and sentencing came up on 11 January 2018, the issue that arose was the number of charges under the AMLATFA on which the applicants had been convicted for. On 8 February 2018, the Appeal Panel heard the applicants' motion on the issue of defective additional records of appeal and dismissed the motion. At this time, the applicants raised the issue on the number of defective charges given that some charges were duplicitous and other predated the predicated offences in the BAFIA. The prosecution conceded that the 224 charges reflected in the notice of appeal were erroneous as it included non-existing offences. Taking the view that the court was not *functus officio*, the Appeal Panel varied its earlier conviction, from 224 charges to 154 charges under the AMLATFA, and passed the sentences accordingly. The applicants resorted to move the present court, through four notices of motions, to review the decision made by the Appeal Panel on the grounds that (i) the conviction was tainted with

illegality and was unsafe, rendering the sentencing also illegal; (ii) the order of conviction on the 224 charges, on 12 December 2017, had been drawn out and perfected; (iii) after convicting the applicants and taking cognisance of the existence of 70 defective charges in the 224 charges under appeal on which the applicants had been convicted, the Appeal Panel could not open that conviction and should, instead, have remitted the case to be heard before another panel; and (iv) the amendment of the conviction on the 224 charges, by substituting it with 154 charges, could not have been done.

Held (dismissing motions)
Per Yew Jen Kie JCA delivering the judgment of the court:

(1) On 12 December 2017, the Appeal Panel had reached a stage of their duty of finding the applicants guilty on 224 charges and convicted them accordingly. The first element of the judgment had been performed and satisfied but that was not a final order as there was still an important part of the duty to perform, which was to sentence the applicants according to the law. That was the reason why the applicants were released on bail pending sentencing. Assuming the applicants had felt aggrieved by the conviction on 224 charges and a recourse of appeal were available to them, they could not proceed to appeal after the conviction stage as the court had yet another function to perform, that was, to sentence the applicants. In other words, the Appeal Panel had not yet *functus officio*. As for the order dated 12 December 2017 that was drawn out and perfected in connection with the conviction on the 224 charges, it was merely an administrative act to reflect the events of 12 December 2017. It was not a final order. (paras 60 & 61)

(2) It would be lamentable if the Appeal Panel, who had not *functus officio*, having been appraised of the 70 defective charges were part of the 224 charges that the applicants had been convicted of, could not use their inherent jurisdiction to put right the record by amending the conviction on 224 charges to 154 charges. The ends of justice behoved them to put the record straight and to ensure that the applicants were not convicted of non-existing charges. There were good and valid reasons to exercise their inherent jurisdiction to straighten the record and this was done without injustice or on terms that excluded justice. The Appeal Panel did not vary its order of conviction on 12 December 2017 by adding more charges. To the contrary, it removed charges which were found to be defective. This amendment did not cause injustice to nor prejudiced the applicants. Far from prejudicing the applicants, it ensured that the applicants would not be wrongly convicted on defective charges and the ends of justice required it. (paras 65 & 66)

(3) The applicants had not shown any exceptional circumstances to review the sentences passed. A close perusal of the grounds for review of conviction and sentence passed by the Appeal Panel showed that the

applicants were using these review applications to re-litigate the merits of the substantive appeal and to re-open and re-examine the final decision of the Appeal Panel. Certain issues on which the applicants were convicted of had all been canvassed and ventilated before the Appeal Panel and the decision made thereon. (paras 37 & 110)

Case(s) referred to:
Ahmadi Yahya v. PP [2012] 7 CLJ 113 CA ***(refd)***
AS Naidu v. State of Madhya Pradesh [1975] Cr LJ 498 ***(refd)***
Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia) Bhd [2008] 6 CLJ 1 FC ***(refd)***
Badan Peguam Malaysia v. Kerajaan Malaysia [2009] 1 CLJ 833 FC ***(refd)***
Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***
Bhoginbhai Hirjibhai v. State of Gujarat AIR 1983 SC 753 ***(refd)***
Datuk Harun Hj Idris v. Officer-in-Charge, Pudu Prison [1981] 1 LNS 77 FC ***(refd)***
Dee Bee Yoke & Anor v. Nick Abu Dasuki Hj Abu Hassan & Anor [2017] 1 CLJ 18 CA ***(refd)***
Herchun Singh & Ors v. PP [1969] 1 LNS 52 FC ***(refd)***
Hock Hua Bank Bhd v. Sahari Murid [1980] 1 LNS 92 FC ***(refd)***
Jayaraman & Ors v. PP [1979] 1 LNS 36 HC ***(refd)***
Kho Jabing v. PP [2016] SGCA 216 ***(refd)***
Mohd Abdullah Ang Swee Kang v. PP [1987] 2 CLJ 405; [1987] CLJ (Rep) 209 SC ***(refd)***
Muralidhar @ Gidda and Another v. State of Karnataka AIR 2014 SC 2200 ***(refd)***
PP v. Cho Sing Koo & Anor [2015] 4 CLJ 491 CA ***(refd)***
PP v. Jamalul Khair [1984] 1 LNS 161 HC ***(refd)***
PP v. Tan Chee Seng & Ors [2003] 8 CLJ 655 HC ***(refd)***
Reza Malek Zadeh Sahabali v. PP [2014] 1 LNS 1873 CA ***(refd)***
S v. Recorder of Manchester [1971] AC 481 ***(refd)***

Legislation referred to:
Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, s. 4(1)(a)
Banking and Financial Institutions Act 1989, ss. 2, 6(4), 25(1)
Courts of Judicature Act 1964, ss. 50, 60, 87
Criminal Procedure Code, ss. 173, 272F, 278, 422
Federal Constitution, arts. 5(1), 121, 145
Rules of the Federal Court 1995, r. 137

(Criminal Applications No: W-06-1-01-2018 & W-06-3-03-2018)
For the applicants - Harpal Singh Grewal, Remy Rao & Nahvinah Selvaraj; M/s AJ Ariffin Yeo & Harpal
- Muhammad Shafee Abdullah, Sarah Abishegam & Wee Yeong Kang; M/s Shafee & Co
- Nicholas Kow & Emile Ezra; M/s Kow, Lau & Ezra
For the respondent - Hamdan Hamzah & Khairul Anuar Abd Halim; DPPs

(Criminal Applications No: W-06-2-01-2018 & W-06-4-03-2018)
For the applicant - Keppy Wong; M/s Keppy Wong & Assoc
For the respondent - Hamdan Hamzah & Khairul Anuar Abd Halim; DPP

Reported by Najib Tamby

A

JUDGMENT

Yew Jen Kie JCA:

Introduction

B **[1]** There are four notices of motion before us wherein the applicants are moving this court to review its own earlier decision. The four notices of motion *inter alia* are seeking the following prayers/orders, namely:

Permohonan No. W-06-1-01/2018 ("first motion")

(i) Bahawa Mahkamah Yang Mulia ini mengkaji semula dan
C mengenepikan keputusan Mahkamah ini yang membenarkan rayuan Responden dan menyabitkan Pemohon-Pemohon bersalah terhadap pertuduhan-pertuduhan di bawah Akta Bank dan Institusi Kewangan 1989 dan Akta Pencegahan Pengubahan Wang Haram dan Pencegahan Pembiayaan Keganasan 2001 dan memerintahkan suatu bicara semula tersebut.

D Permohonan No. W-06-2-01/2018 ("second motion")

(i) Keputusan Mahkamah Rayuan bertarikh 12/12/17 yang membenarkan rayuan Pendakwa Raya dan seterusnya mensabitkan Responden Pertama di bawah seksyen 25(1) Akta Bank dan Institusi Kewangan 1989 (BAFIA) dan seksyen 4(1) Akta Pencegahan Pengubahan Wang Haram dan
E Pencegahan Pembiayaan Keganasan 2001 (AMLATFA) diketepikan;

(ii) Bahawa penghakiman dan keputusan Mahkamah Sesyen Kuala Lumpur dan Mahkamah Tinggi Kuala Lumpur yang telah melepaskan dan membebaskan Pemohon Pertama (tertuduh pertama) dikekalkan.

Permohonan No. W-06-3-03/2018 ("third motion")
F

(i) Bahawa Mahkamah Yang Mulia ini mengkaji semula dan mengenepikan hukuman yang dijatuhkan oleh Mahkamah ini ke atas pertuduhan-pertuduhan di bawah Akta Bank dan Institusi Kewangan 1989;

G (ii) Bahawa Mahkamah Yang Mulia ini mengkaji semula dan mengenepikan hukuman yang dijatuhkan oleh Mahkamah ini ke atas pertuduhan-pertuduhan di bawah Akta Pencegahan Pengubahan Wang Haram dan Pencegahan Pembiayaan Keganasan 2001.

Permohonan No. W-06-4-03/2018 ("fourth motion")

H (i) Bahawa Mahkamah Yang Mulia ini mengkaji semula dan mengenepikan hukuman yang dijatuhkan oleh Mahkamah ini ke atas pertuduhan-pertuduhan di bawah Akta Bank dan Institusi Kewangan 1989 terhadap Pemohon;

(ii) Bahawa Mahkamah Yang Mulia ini mengkaji semula dan
I mengenepikan hukuman yang dijatuhkan oleh Mahkamah ini ke atas pertuduhan-pertuduhan di bawah Akta Pencegahan Pengubahan Wang Haram dan Pencegahan Pembiayaan Keganasan 2001;

(iii) Secara alternatifnya, bahawa Mahkamah Yang Mulia ini meminda dan meringankan hukuman yang dijatuhkan ke atas sabitan kesalahan di bawah Akta Bank dan Institusi Kewangan 1989;

(iv) Secara alternatifnya bahawa Mahkamah Yang Mulia Ini meminda dan meringankan hukuman yang dijatuhkan ke atas sabitan kesalahan di bawah Akta Pengubahan Wang Haram dan Pencegahan Pembiayaan Keganasan 2001.

[2] To put in simple terms, the first and third motions are seeking a review of the conviction. Whereas the second and fourth motions are in respect of the sentences.

[3] All the four motions are in respect of the following appeals in this court:

(i) Rayuan Jenayah No: W-09-367-10-2016;

(ii) Rayuan Jenayah No: W-09-369-10-2016;

(iii) Rayuan Jenayah No: W-09-371-10-2016;

(iv) Rayuan Jenayah No: W-09-373-10-2016;

(v) Rayuan Jenayah No: W-09-375-10-2016; and

(vi) Mahkamah Rayuan Jenayah No: W-09-377-10-2016.

[4] The first and third motions involve the same applicants, namely, Chin Wai Leong ("first applicant"), Marcus Yee Yen Seng ("second applicant"), Ng Poh Weng ("third applicant"), Genneva Sdn Bhd ("fourth applicant"). They are the third, fourth, second and first respondents respectively in the appeal.

[5] The second and fourth motions involve the same applicant, Liew Chee Wah ("the fifth applicant"). He is the fifth respondent in the appeal.

(The applicants (except the fourth applicant, Genneva Sdn Bhd) in the first and third motions and the applicant in the second and fourth motions will be collectively referred to as "the applicants").

Factual Background

[6] In the Sessions Court, Geneva Sdn Bhd and each of the applicants, in their capacity as directors of Genneva Sdn Bhd, were charged under BAFIA for receiving deposit from the public without a licence granted under s. 6(4) of BAFIA.

[7] The applicants, except Genneva Sdn Bhd, were also charged under s. 4(1)(a) AMLATFA as follows:

(i) first applicant: 61 charges;

(ii) second applicant: 40 charges;

(iii) third applicant: 93 charges;

(iv) fifth applicant: 30 charges

Making a total of 224 charges under AMLATFA ("224 charges").

[8] The learned Sessions Court Judge, after a full trial, discharged and acquitted Genneva Sdn Bhd and the applicants of all the charges under BAFIA and AMLATFA preferred against them.

[9] Dissatisfied with the decision, the prosecution ie, the respondent herein appealed to the High Court.

[10] The High Court on 20 August 2017, after hearing the appeal, dismissed the appeal and affirmed the decision of the Sessions Court Judge.

[11] Dissatisfied with the dismissal of the appeal, the prosecution appealed to the Court of Appeal.

[12] The appeal was heard by a panel chaired by Justice Mohtarudin bin Baki, Justice Zakaria bin Sam and Justice Abdul Karim Abdul Jalil ("the appeal panel"). The appeal panel on 12 December 2017 allowed the appeal and found the applicants guilty of all the charges both under BAFIA and AMLATFA and Genneva Sdn Bhd was found guilty on BAFIA charge.

[13] Thereafter, upon application by learned counsel for the applicants, the sentencing of the applicants was adjourned to 4 January 2018.

[14] On the adjourned hearing of mitigation and sentencing, it was adjourned further to 11 January 2018 upon application by Mr Shafee, learned counsel for the first applicant.

[15] On 11 January 2018, issue was raised on the accuracy on the number of charges under AMLATFA on which the applicants had been convicted. The matter was then adjourned for the prosecution to identify the charges and to obtain the records from the Sessions Court.

[16] On 5 February 2018, the prosecution applied to play the CRT of proceeding on 14 August 2012 in Sessions Court to show that on 14 August 2012, Deputy Public Prosecutor applied to withdraw 575 AMLATFA charges. The application was opposed by the respondents ie, the applicants herein on the ground that it contravened s. 272F of Criminal Procedure Code. As a result, the matter was further adjourned to 8 February 2018 for additional appeal record to be produced in court to include the correct number of charges and the relevant notes of proceedings on 14 August 2012 in the Sessions Court.

[17] On 8 February 2018, the appeal panel heard the respondents' motion on the issue of defective additional records of appeal and dismissed the motion.

[18] At this time, the respondents raised the issue on number of defective charges given that some charges were duplicitous and others predated the predicated offences in BAFIA (the period between November 2008 and July 2009). The prosecution conceded that the 224 charges reflected in the notice of appeal were erroneous as it included non-existing offences.

[19] Thereupon, the appeal panel invited the parties to submit on the following issues:

(i) whether the matter warranted a rehearing before another panel;

(ii) whether the order on conviction could be varied at sentencing, the number of charges having been reduced from conviction stage to the sentencing stage; and

(iii) whether the curative provision could apply to cure the flaws in the charges pursuant to s. 60 of Courts of Judicature Act 1964; ss. 422 and 278 of Criminal Procedure Code.

[20] On 21 February 2018, the adjourned date for submission, all parties appeared and submitted. Counsel for the respondents sought for rehearing in view of the defective charges but it was dismissed. Taking the view that the court had not *functus officio*, the appeal panel varied its earlier conviction on 224 charges to 154 AMLATFA charges ("154 charges") after allowing the prosecution to withdraw a total of 70 charges.

[21] After withdrawing the 70 charges, the prosecution listed the 154 charges against the applicants as follows:

(i) first applicant: 46 charges

(ii) second applicant: 28 charges

(iii) third applicant: 68 charges

(iv) fifth applicant: 12 charges

[22] The reason for withdrawal of 70 AMLATFA charges is because those charges are non-existing offence due to the fact that the date of the cheques were not within the time period of the predicated offence.

[23] Thereafter, upon hearing the mitigation for the applicants, the following sentences were passed:

(i) BAFIA

1. respondent Ng Poh Weng, Marcus Yee Syuen Seng, Ching Wai Leong dan Liew Chee Wah masing-masing dikenakan penjara 5 tahun dan denda sebanyak RM1 juta dan penjara 1 tahun jika ingkar;

2. Genneva Sdn Bhd didenda; RM2 juta.

(ii) AMLATFA

3. Setiap respondent masing-masing dikenakan penjara 3 tahun. Tiada denda dikenakan "in view of the seriousness of the offence".

4. Penjara 3 tahun bagi setiap pertuduhan dan serentak.

(iii) Hukuman Penjara berjalan secara berasingan

5. Hukuman penjara di bawah BAFIA dan AMLATFA berjalan secara berasingan.

(iv) Perintah Pelucuthakan bagi Harta Disita di bawah AMLATFA

6. Harta dilucutkan seperti selaras dengan s. 55 AMLATFA dan seksyen 61 AMLATFA manakala notis di bawah s. 61 AMLATFA hendaklah disiarkan.

[24] By reason that the cases against the applicants were originated from the Sessions Court, the Court of Appeal is therefore the apex court and there is no further recourse of appeal for the applicants. This is clearly stated in s. 87 read with s. 50 of the Courts of Judicature Act 1964. Hence, the applicant resorted to move this court to review its own decision made by the appeal panel on 12 December 2017 and 21 February 2018.

The Law On Jurisdiction To Review

[25] The Court of Appeal in a recent case of *Dee Bee Yoke & Anor v. Nick Abu Dasuki Hj Abu Hassan & Anor* [2017] 1 CLJ 18; [2016] 12 MLJ 39, had re-considered the issue of jurisdiction of the court to review its own decision and based on the precedent and pronouncement of the Federal Court, decided that it has the jurisdiction to review its own decision. It says at pp. 22-24 (CLJ); pp. 43-45 (MLJ):

THE COURT'S JURISDICTION

[5] It was the applicants' submission that this court has the jurisdiction to review its earlier decision based on this court's decision in *Ramanathan a/l Chelliah v. Public Prosecutor* [2009] 6 MLJ 215; [2009] 6 CLJ 55, where Gopal Sri Ram (JCA) (as he was then) delivering the judgment of this court, at p 281 (MLJ); p. 59 (CLJ), held as follows:

> [2] We will take the question of jurisdiction first. **It is now settled that the Court of Appeal has jurisdiction to review its own decision in a given case**. See *Taylor v. Lawrence* [2002] EWCA Civ 90, where it was held as follows:
>
> > **The Court of Appeal had a residual jurisdiction to reopen an appeal which it had already determined in order to avoid real injustice in exceptional circumstances**. The court had implicit powers to do that which was necessary to achieve the dual objectives of an appellate court, namely to correct wrong decisions so as to ensure justice between the litigants involved, and to ensure public confidence in the administration of justice,

not only by remedying wrong decisions, but also by clarifying and developing the law and setting precedents. A court had to have such powers in order to enforce its rules of practice, suppress any abuses of its process and defeat any attempted thwarting of its processes. The residual jurisdiction to reopen appeals was linked to a discretion which enable the Court of Appeal to confine its use to the cases in which it was appropriate for the jurisdiction to be exercised.

See also, *Chu Tak Fai v. Public Prosecutor* [2007] 1 MLJ 201; [2006] 4 CLJ 931.

[3] *We are of the view that it is important to recognise that this court has a residual jurisdiction to reopen an appeal which it had already determined particularly in cases where there is no further recourse to a party*. In a case as a present, since the accused was tried in a subordinate court, this court is the court of last resort. The jurisdiction to reopen and review is therefore important in a case as the present to ensure that a manifest injustice does not go by uncorrected.

...

[6] Further, in the Federal Court case of *Harcharan Singh a/l Piara Singh v. Public Prosecutor* [2011] 6 MLJ 145; [2011] 6 CLJ 625, it was submitted that the Federal Court had declared that where the Court of Appeal is the apex court of any particular case, then it is clothed with such inherent power. The Federal Court, speaking through Richard Malanjum CJ (Sabah and Sarawak), at p. 152 (MLJ); p. 633 (CLJ), stated as follows:

[17] Accordingly, where the Court of Appeal is the apex court of any particular case in view of s. 87 of the Courts of Judicature Act 1964 ('CJA') then it is also clothed with such inherent power (see: *Ramanathan a/l Chelliah v. Public Prosecutor* [2009] 6 MLJ 215; [2009] 6 CLJ 55) …

See also the Federal Court's views on its inherent powers in *Dato' See Teow Chuan & Ors v. Ooi Woon Chee & Ors and other applications* [2013] 4 MLJ 351.

[7] It was the respondents' submission that this court is not seized with power to review the decision of the said panel, and hence this application must be dismissed *in limine* for the following reasons:

(a) unlike the Federal Court, the Court of Appeal does not have a review mechanism. Therefore, the decision of this court is final when it comes to accident/running down matters (see *Abdul Ghaffar bin Md Amin v. Ibrahim bin Yusoff & Anor* [2008] 3 MLJ 771; [2008] 5 CLJ 1);

(b) the Court of Appeal is a creation of statute, that is, art. 121(1B) of the Federal Constitution;

(c) the Court of Appeal Rules 1994 do not contain provision in respect of a review;

A (d) this position is comparable to r. 137 of the Federal Court Rules 1995 which permits the Federal Court to review its own decision, but in exceptional circumstances only;

(e) this applicants' application operates to defeat the principle of finality of litigation; and

B (f) such review application would create a floodgate wherein dissatisfied litigants would move a motion for review on decided matters at the Court of Appeal, which it was submitted was not the intention of Parliament.

DECISION

C [8] Having heard the parties on this issue, we were of the view that we had the jurisdiction to hear the applicants' application. Our view was based on the decided cases referred to by learned counsel for the applicants, especially the case of *Ramanathan a/l Chelliah v. Public Prosecutor* and the binding authority of the Federal Court case of *Harcharan Singh a/l Piara Singh v. Public Prosecutor*.

D **[26]** In the case of *Ahmadi Yahya v. PP* [2012] 7 CLJ 113 (CA), the issue on whether the Court of Appeal, as an apex court, has the inherent jurisdiction to review its own previous decision in the same case was brought into focus, this is what Azahar Mohamed JCA (now FCJ) had considered:

E [18] This then brings into focus the following primary question of law which is of public importance: whether the Court of Appeal, as an apex court, has the inherent jurisdiction to review its own previous decision in the same case.

[19] In connection with this issue, there are two previous judgments of F the Court of Appeal that ruled to the effect that this court has the inherent power to review its own previous decision under very exceptional circumstances. First is the case of *Ramanathan Chelliah v. PP* [2009] 6 CLJ 55 where Gopal Sri Ram JCA (as His Lordship then was) in delivering the unanimous judgment of the court said:

G It is now settled that the Court of Appeal has jurisdiction to review its own decision in a given case. See, *Taylor v. Lawrence* [2002] EWCA Civ 90, where it was held as follows:

The Court of Appeal had a residual jurisdiction to reopen an appeal which it had already determined in order to avoid real injustice in exceptional circumstances. The court had implicit H powers to do that which was necessary to achieve the dual objectives of an appellate court, namely to correct wrong decisions so as to ensure justice between the litigants involved, and to ensure public confidence in the administration of justice, not only by remedying wrong decisions, but also by clarifying and I developing the law and setting precedents. A court had to have such powers in order to enforce its rules of practice, suppress any abuses of its process and defeat any attempted thwarting of its processes. The residual jurisdiction to reopen appeals was linked to

a discretion which enabled the Court of Appeal to confine its use to the cases in which it was appropriate for the jurisdiction to be exercised.

See also, *Chu Tak Fai v. Public Prosecutor* [2006] 4 CLJ 931.

We are of the view that *it is important to recognise that this court has a residual jurisdiction to reopen an appeal which it had already determined particularly in cases where there is no further recourse to a party*. In a case as the present, since the accused was tried in a subordinate court, this court is the court of last resort. The jurisdiction to reopen and review is therefore important in a case as the present to ensure that a manifest injustice does not go by uncorrected.

[20] The second case is *PP v. Abdullah Idris* [2009] 5 CLJ 445, where James Foong JCA (as His Lordship then was) in delivering the unanimous judgment of the court, concluded the following, after a careful and comprehensive analysis of case law authorities and the relevant statutory provisions:

When a court is armed with "residual jurisdiction" or "implicit or implied jurisdiction" or "inherent jurisdiction" for the 'the doing by the courts of acts which it needs must have power to do in order to maintain its character as a court of justice' then I am of the view that the Court of Appeal is seized with jurisdiction, not from O. 92 r. 4 of the Rules of the High Court but from a residual or implicit or implied form which naturally makes no distinction between civil and criminal cases. Such inherent power applies across the board save and except within the limited circumstances as forewarned by the authorities cited above.

[21] These two decisions were however not followed by the Court of Appeal in *Ishak Hj Shaari v. PP* [2011] 2 CLJ 46. In this case, the respondent was charged in the Sessions Court with an offence of rape of a minor under s. 376 of the Penal Code. The respondent was convicted and sentenced by the said court to 15 years imprisonment and five strokes of whipping. On appeal to the High Court, the conviction and sentence was set aside. The Court of Appeal however allowed the Public Prosecutor's appeal, and restored the conviction and sentence recorded by the Sessions Court. Subsequently, the respondent applied to the Court of Appeal to exercise its power of review to review the earlier decision of the Court of Appeal. The public prosecutor then raised a preliminary objection that the Court of Appeal has no jurisdiction or power to review its own previous decision. By a majority, the Court of Appeal in *Ishak Hj Shaari v. PP* allowed the Public Prosecutor's preliminary objection. In delivering the majority judgment, Low Hop Bing JCA said that the jurisdiction of the Court of Appeal is to be determined by reference to art. 121(1B) of the Federal Constitution read with s. 50(1) of the CJA and O. 92 r. 4 of the Rules of the High Court 1980. In the words of His Lordship:

The Court of Appeal does not have any criminal appellate jurisdiction to hear and determine criminal appeals which had finally been disposed of by the same court. Article 121(18) and

A s. 50(1) have never contemplated the existence of the inherent powers of the Court of Appeal in the exercise of criminal appellate jurisdiction.

His Lordship then continued:

B The absence of the word 'review' in art. 121(1B), s. 50(1) and O. 92 r. 4 means that no review jurisdiction has ever been conferred upon the Court of Appeal when it was created in 1994.

[22] Zaharah JCA in her separate concurring judgment said that the CJA sets out in detail the limits of the jurisdiction conferred on the Court of Appeal and that nothing in s. 50 of the CJA or any other provisions of C the said Act or any other law confers upon the Court of Appeal the jurisdiction to review any matter which it has heard and finally determined, except in the circumstances set out in ss. 42 and 44. Her Ladyship added:

D ... it is my view that the reopening, rehearing, re-examination or review of a matter which has already been finally determined by a court is not merely a procedural issue but is a substantive one. It is therefore a matter of jurisdiction. Unless and until jurisdiction is granted by law, this court has no such jurisdiction.

E As such jurisdiction has not been granted by the Federal Constitution or by or under any federal law, or by the common law as it is applicable in this country; this court has no jurisdiction to hear this application.

[23] In his dissenting judgment, Mohd Hishamuddin JCA said:

F ... I am of the view that the Federal Court and the Court of Appeal have the inherent jurisdiction or powers to review their own previous decisions in exceptional circumstances where the court is satisfied that it is necessary to do so in order to prevent an injustice being occasioned by the previous decision or to prevent an abuse of the process of the court, particularly when that previous decision was made by the Court of Appeal sitting as a G court of last resort.

The source of the inherent powers is the judicial power that is vested on the judiciary by the Federal Constitution, in particular, art 121.

[24] After giving my utmost and anxious consideration to this issue, with H the greatest of respect, I find myself in agreement with the judgments of this court in *Ramanathan Chelliah v. PP* (*supr*a), *PP v. Abdullah Idris* (*supra*) and the minority judgment in *Ishak Hj Shaari v. PP* (*supra*). In my view, it is clear on principle and on authority that in very limited and exceptional circumstances, in order to uphold the Court of Appeal as a court of justice and to meet the ends of justice, it must have an inherent jurisdiction and I the necessary inherent power to prevent injustice and to ensure public confidence in the administration of justice. In a case where there is no alternative effective remedy, as an apex court, the Court of Appeal has

an inherent jurisdiction to review, and if the circumstances so warrant, to set aside an earlier decision made for instance, in clear violation or breach of statutory law. Courts of justice have no authority to act in contravention of written law. For that reason, the ends of justice will not be met if such inherent jurisdiction and inherent power do not exist. But such an exercise must only be undertaken sparingly and with circumspection. It is important that this court makes use of it with a proper sense of responsibility and wisely to remove any injustice. I now give my reasons for so deciding.

(emphasis added)

[27] Earlier in *Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] 6 CLJ 1, there was an application by the applicant/respondent to have a decision of the Federal Court reviewed and reheard pursuant to r. 137 of the Rules of the Federal Court 1995 to prevent injustice or to prevent an abuse of the process of the court. Abdul Hamid Mohamad CJ (as he then was), after pronouncing that the Federal Court has inherent jurisdiction to review its earlier decision, opined that such power can only be exercised in limited and exceptional circumstances and not to be used to re-open or re-examine the earlier decision in these words:

[4] In an application for a review by this court of its own decision, the court must be satisfied that it is a case that falls within the limited grounds and very exceptional circumstance in which a review may be made. Only if it does, that the court reviews its own earlier judgment. Under no circumstances should the court position itself as if it were hearing an appeal and decide the case as such. In other words, it is not for the court to consider whether this court had or had not made a correct decision on the facts. That is a matter of opinion. Even on the issue of law, it is not for this court to determine whether this court had earlier, in the same case, interpreted or applied the law correctly or not. That too is a matter of opinion. An occasion that I can think of where this court may review its own judgment in the same case on question of law is where the court had applied a statutory provision that has been repealed. I do not think that review power should be exercised even where the earlier panel had followed certain judgments and not the others or had overlooked the others. Not even where the earlier panel had disagreed with the court's earlier judgments. If a party is dissatisfied with a judgment of this court that does not follow the court's own earlier judgments, the matter may be taken up in another appeal in a similar case. That is what is usually called "revisiting". Certainly, it should not be taken up in the same case by way of a review. That had been the practice of this court all these years and it should remain so. Otherwise, there will be no end to litigation. A review may lead to another review and a further review. This court has so many times warned against such attempts. See:

1. *Lye Thai Sang & Anor v. Faber Merlin (M) Sdn Bhd* [1985] 2 CLJ 423; [1985] CLJ (Rep) 196.
2. *Adorna Properties Sdn Bhd v. Kobchai Sosothikul* [2005] 1 CLJ 565.

A

3. *Allied Capital Sdn Bhd v. Mohd. Latiff Bin Shah Mohd & Another Application* [2004] 4 CLJ 350, in particular the dissenting judgment of Abdul Hamid Mohamad, FCJ.

4. *Tai Chai Yu v. The Chief Registrar of the Federal Court* [1998] 2 CLJ 358.

5. *Chan Yock Cher v. Chan Teong Peng* [2005] 4 CLJ 29.

B

6. *Chu Tak Fai v. Public Prosecutor* [2006] 4 CLJ 931.

[5] Coming back to r. 137 of the RFC 1995, I have dealt at length on the effect of the rule in *Abdul Ghaffar Md. Amin v. Ibrahim Yusoff & Anor* [2008] 5 CLJ 1 and in *Sia Cheng Soon & Anor v. Tengku Ismail Tengku Ibrahim* [2008] 5 CLJ 201. In the former case I concluded:

C

> In other words, rule 137 cannot be construed as to confer any new jurisdiction to the existing jurisdiction of the Federal Court as spelt out under the Federal Constitution, the Courts of Judicature Act and other statutes.

D

[6] However, I accept that, **in very limited and exceptional cases, this court does have the inherent jurisdiction to review its own decision**. I must stress again that this jurisdiction is very limited in its scope and must not be abused. I have no difficulty in accepting that inherent jurisdiction may be exercised in the following instances:

E

[7] First, where there is a lack of quorum as in *Chia Yan Tek & Anor v. Ng Swee Kiat & Anor* [2001] 4 CLJ 61 where two of the presiding judges had retired at the time when the judgment was delivered and only one judge remaining who was capable of exercising his functions as a judge of that court.

F

[8] Secondly, where the decision had been obtained by fraud or suppression of material evidence as in *MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun* [2002] 3 CLJ 577.

[9] Thirdly, where there is a clear infringement of statutory law. In this respect, a clear example would be where the court has mistakenly applied a repealed law. But, where it is a matter of interpretation or application

G

of the law, it is in my view not a suitable case for a review. The judgment of this court is *Adorna Properties Sdn. Bhd. v. Kobchai Sosothikul* [2005] 1 CLJ 565 does throw some light in this respect.

[10] Fourthly, where application for review has not been heard by this court but, through no fault of the applicant, an order was inadvertently made as if he has been heard as in *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai And Others* AIR (1941).

H

[11] Fifthly, where bias has been established as in *Taylor & Anor v. Lawrence & Anor* [2002] 2 All ER 353.

[12] Of course, there may be other circumstances. But, the review jurisdiction should never be allowed to be used to question a finding of this court in an appeal on question of facts.

I

(emphasis added)

[28] In *Badan Peguam Malaysia v. Kerajaan Malaysia* [2009] 1 CLJ 833, Zaki Tun Azmi CJ (as he then was) reiterated:

> [12] **Before the application can succeed, he must be able to show on the face of the record that there was injustice. That error must be obvious on the face of the record**. It should be able to be seen just by reading the record that there was an error which obviously was an injustice. In *Asean Security Papermills* case, I have listed out the circumstances where discretion under r. 137 can be exercised *supra* at p. 15. If one were to go through all these cases, injustice could be clearly seen even before going into the merits of each case. It cannot apply where a decision of this court is only questioned, whether in law or on the facts of the case. This principle is well spelt out in the case cited below.
>
> [13] In *Chan Yock Cher v. Chan Teong Peng* [2005] 4 CLJ 29 at p. 45, Abdul Hamid Mohamad FCJ (as he then was) said this:
>
> > ... It has been seen that the applicant questions the findings of this court both in law and on facts. These are matters of opinion. Just because we may disagree (we do not say whether we agree or disagree with such findings) with the earlier panel of this court, that is not a ground that warrants us to review the decision. Similarly, regarding the interpretation and application of some provisions of the Companies Act 1965, even if we disagree with the earlier panel (again we do not say whether we agree or disagree) that does not warrant us to set aside the judgment and the order of the earlier panel of this court and re-hear and review the appeal. Otherwise, as has been said, there would be no end to a proceeding.
>
> [14] In *Chu Tak Fai v. PP* [2006] 4 CLJ 931 at p. 946, Nik Hashim FCJ defines injustice as:
>
> > ... (i) a lack of fairness or justice or; (ii) an unjust act. Whether an act is unjust or not is a question of law, and in this case, it must depend on the determination of whether the failure of the chemist to specify the weight of the samples he used in the analysis of the drug in question is unjust so as to cause an injustice to the applicant or an abuse of process of the Court which needs to be rectified.
>
> (emphasis added)

[29] Raus Sharif PCA (as he then was) in *Ahmadi Yahya's* case, *supra*, cautioned that in exercising such inherent jurisdiction, the court should not position itself as it were hearing an appeal. He said:

> [5] An apex court must be armed with such inherent powers in order to correct obvious mistake and to do justice. However, **in exercising such powers, it should not position itself as if it were hearing an appeal**. A good guide of such exercise of powers by an apex court has been laid down by the Federal Court in the case of *Asean Security Paper Mills Sdn*

A *Bhd v. Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] 6 CLJ at pg 7. The case clearly demonstrates that the power by an apex court to review its own previous decision may only be done in very exceptional circumstances.

(emphasis added)

B **[30]** The rationale in ensuring that the exercise of the review jurisdiction is not to be used as an attempt to re-litigate the substantive merits of the appeal and to re-open and re-examine a final decision is succinctly put in these words by Azahar Mohamed JCA (now FCJ) in *Ahmadi bin Yahya*'s case, *supra*.

C [40] ... The instant application is in actual fact an attempt to re-litigate the substantive merits of the appeal and re-open and re-examine a final decision that had already been given by this court on 13 December 2011. **It seems to me that the applicant was attempting to have the proverbial second bite of the cherry in filing the application herein**. In fact, in the
D course of the proceedings before us Mr Rayer fairly and frankly admitted that he had advanced his arguments concerning exh. D18 during the hearing of the appeal on 13 December 2011. **The point involving exh. D18 had already been argued before this court on appeal on which a decision had already been delivered. For that reason, the merit of the appeal had been decisively settled by this court**. Consequently, as argued
E by Encik Saiful Hazmi bin Mohd Saad, learned Deputy Public Prosecutor, this appeal came to an end after this court had given its decision on 13 December 2011 and as a result, this court's jurisdiction on the appeal ended and concluded at that stage. There was no injustice or procedural unfairness on the face of the record (see: *Badan Peguam Malaysia v. Kerajaan Malaysia* [2009] 1 CLJ 833). In view of that, **the court became**
F ***functus officio* in so far as the matter is concerned**. The entire case has been disposed of, culminating with the decision of this court on 13 December 2011. **The judicial process has come to an end**. There is no longer any 'live' issue to be determined. Furthermore, by the doctrine of *res judicata*, once the appeal was heard and decision given, *and there being no provision for a further appeal to the Federal Court on the matter, the appeal*
G *cannot be reheard, since the decision is final and becomes the truth between parties* (see: *Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783). *Res judicata is not confined to the issues which the court is actually asked to decide, but covers issue or facts which are clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them*
H (see: *Chemfert Sdn Bhd & Anor v. Lim Hua* [2010] 7 CLJ 491). The applicability of the doctrine of *res judicata* in criminal matters is set out in *Superintendant of Pudu Prison & Ors v. Sim Kie Chon* [1986] 1 CLJ 548; [1986] CLJ (Rep) 256). The principle of *res judicata* is based on the necessity of giving finality to judicial decisions. *It would not promote the due administration*
I *of the law or the promotion of justice for this court to have a power to re-hear an appeal afresh of which it has finally disposed. It is in the public interest that there should be finality in an appeal before this court. It is imperative to the due administration of our system of justice that once an appeal has been properly*

concluded, it is no longer before the court; if not there can be no end to litigation. It would otherwise open the floodgate to endless re-litigation before the same court. The value and usefulness of a decision of this court becomes doubtful and uncertain if the appeal can be reopened at any time and the court is permitted to make a different order.

(emphasis added)

[31] In *Kho Jabing v. PP* [2016] SGCA 216, the Singapore Court of Appeal opined thus at p. 2:

However, the cost of error in the criminal process is measured not in monetary terms, but in terms of the liberty and, sometimes, even the life of an individual. *For this reason, where criminal cases are concerned, the principle of finality cannot be applied in as unyielding a manner as in the civil context and it seems that the court should, in exceptional cases, be able to review its previous decisions where it is necessary to correct a miscarriage of justice*. The question would then be this: when do these conditions obtain? In the present criminal motion, we confront this very issue.'

At p. 24:

43 Gathering up the threads of the foregoing analysis, several propositions can be distilled:

(a) First, a final appellate court has the inherent power, by virtue of its character as a court of justice, to correct its own mistakes in order to prevent miscarriages of justice or, to use a cognate expression favoured in England, "real injustice".

(b) Second, this power of review is to be exercised sparingly, and only in circumstances which can be described as "exceptional" and which therefore override the imperative of finality.

(c) Third, a review by a final appellant court is distinct from and should not be confused with an appeal. In conducting a review, the court is primarily concerned not with the correctness of the decision under review, but with whether there had been a miscarriage of justice. These concepts are not the same. The paradigm case of a miscarriage of justice is where there has been a breach of natural justice.

(d) Fourth, the substratum of an application should be a new material that was not previously canvassed in the proceedings leading to the decision under challenge. The material in question must demonstrate a 'powerful probability" that there has been a miscarriage of justice which warrants invoking the court's review jurisdiction

(e) Finally, this power of review is available in both civil and criminal cases, although the rules governing its exercise might differ depending on the context.

[32] We are also mindful of the amendment to the Rules of the Court of Appeal 2018 that came into force on 1 March 2018 (P.U.(A) 26 of 2018) of which a new Part V of Chapter Four was added and reads as follows:

> Part V
>
> Inherent power of the Court
>
> 105. For the avoidance of doubt, it is declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the court.

Grounds For Review Of Conviction In The First Motion

[33] The grounds for review of conviction in the first motion read as follows:

(i) The earlier decision of this Honourable Court has occasioned an injustice and there is no effective alternative remedy available to the applicant other than seeking a review under the inherent jurisdiction of this court.

(ii) The said decision of this Honourable Court contravened art. 5(1) of the Federal Constitution, in that, the applicants have been found guilty of an offence contrary to s. 25(1) of BAFIA when the said provision is inapplicable to the business of the fourth applicant.

(iii) The provisions of BAFIA on which the charges were brought are inapplicable to the facts of the case against the applicants.

(iv) The Honourable Court in its earlier decision failed to appreciate the true purports of s. 2 of BAFIA, in which, banking business is defined and proceeded to find the applicants guilty on the premise unknown to law and not provided for under the said Act.

(v) Consequently, this Honourable Court seriously misdirected itself in the application of s. 4(1)(a) of the said Act and other provisions of the said Act.

(vi) The decision is against the true intention of the Legislature in enacting the BAFIA as reflected in the Hansard.

(vii) The definition of "banking business" and the meaning of "deposit" under BAFIA is a matter of public importance and a correct interpretation of the said terms will of in the interest of the general public.

(viii) A further and important issue is the exemption order enabling any person or corporate from dealing in gold which was forbidden under the provisions of the Exchange Control Act 1953.

(ix) That the review is necessary to avoid a real injustice in the exception circumstances of this case and this court ought to correct the wrong decision to ensure justice between the applicants and the prosecution and to ensure public confidence in the administration of justice.

(x) By the review process, a wrong decision will be correct and the jurisprudence in this case which has far-reaching consequences to other persons involved in the same trade will provide a true and just interpretation of the law relating to the requirement of the banking license.

Grounds For Review Of Conviction In The Second Motion

[34] The grounds for review of conviction as appeared in the second motion read as follows:

> Alasan-alasan permohonan ini secara ringkas adalah kerana Responden Pertama telah tidak didengar secukupnya oleh panel Mahkamah Rayuan pada 12/12/17, dan keterangan penting berhubung perletakan jawatannya daripada Geneva Sdn Bhd dan semua tugasan pengarah bermula 1/10/08 telah gagal dipertimbangkan sewajarnya. Alasan lebih lanjut sepertimana dalam affidavit Liew Chee Wah yang difailkan disini.

Grounds Of Review Of Sentence In The Third Motion

[35] The grounds for review of sentence in the third motion read as follows:

(i) The sentence passed in an earlier decision of this Honourable Court has occasioned an injustice and there is no effective alternative remedy available to the applicants other than seeking a review under the inherent jurisdiction of this court;

(ii) The said decision of this Honourable Court contravenes art. 5(1) of the Federal Constitution, in that, the sentence passed is irregular and consequently a failure of justice has been occasioned thereby.

(iii) There were serious irregularities in the sentencing proceedings and the applicants were convicted on charges which were not identified or particularised or made known to the applicants.

(iv) The irregularities are of such a grave and serious nature and therefore incurable under s. 422 of the Criminal Procedure Code.

(v) That the review is necessary to avoid a real injustice in the exceptional circumstances of this case ought to correct the wrong decision to ensure justice between the applicants and the prosecution and to ensure public confidence in the administration of justice.

(vi) By the review process, a wrong decision will be corrected and the jurisprudence in this case which has far-reaching consequences to other person involved in the same trade will provide a true and just interpretation of the law relating to the requirement of a banking licence.

A **Grounds For Review Of Sentence In The Fourth Motion**

[36] The grounds for review of sentence in the fourth motion read as follows:

(1) Hukuman yang dijatuhkan oleh Mahkamah Yang Mulia Ini dalam keputusan sebelum ini telah menyebabkan ketidakadilan dan tiada pilihan remedi lain yang tersedia bagi Pemohon selain daripada mendapatkan suatu pengkajian semula di bawah bidang kuasa Mahkamah ini;

(2) Keputusan Mahkamah Yang Mulia ini bercanggah dengan Artikel 5(1) Perlembagaan Persekutuan, di mana kebebasan Pemohon telah dilucutkan secara salah.

(3) Terdapat ketidakaturan yang serius dalam prosiding-prosiding hukuman dan Pemohon telah disabitkan kesalahan ke atas pertuduhan-pertuduhan yang tidak dikenal pasti atau dinyatakan secara khusus atau dimaklumkan kepada Pemohon.

(4) Ketidakaturan-ketidakaturan tersebut adalah bersifat serius dan tidak boleh diperbetulkan di bawah Sek. 422 Kanun Prosedure Jenayah.

(5) Hukuman yang telah dijatuhkan adalah tidak wajar dan terlalu berat serta tidak berasaskan fakta kes sabitan tertuduh Liew Chee Wah.

[37] A close perusal of the grounds for review of conviction and sentence passed by the appeal panel and the affidavits in support filed in support the four motions amply show that, as rightly submitted by the prosecution, the applicants are using these review applications to re-litigate the merits of the substantive appeal and to re-open and to re-examine the final decision of the appeal panel. The issues such as the applicability of BAFIA to the facts of the case against the applicants, the resignation of the fifth applicant as director of Genneva Sdn Bhd since 1 October 2008, non-identification or particularisation of charges on which the applicants were convicted had all been canvassed and ventilated before the appeal panel and decision made thereon.

[38] However, in their submissions, learned counsel for the applicants contended that there are special and exception circumstances warranting a review because of illegality, substantial irregularity and miscarriage of justice and new material.

Whether The Conviction Is Illegal On Illegal Exercise Of Jurisdiction

[39] Mr Shafee, learned counsel for the first appellant, submitted that illegality has permeated the very substratum of the conviction resulting in the conviction being tainted with illegality and unsafe. Consequently, the sentencing is also illegal. A review is warranted to correct a miscarriage of justice, citing *Kho Jabing*, *supra*.

[40] It was submitted that the order in respect of the conviction on 224 charges on 12 December 2017 had been drawn out and perfected. A

[41] It was further submitted that after convicting the applicants and taking cognisance of the existence of 70 defective charges in the 224 charges under appeal on which the applicants had been convicted, the appeal panel could not open that conviction and should instead have remitted the case to be heard before another panel. Instead, the appeal panel on 21 February 2018 reviewed their order of conviction, upon allowing the prosecution to withdraw 70 charges, by reducing the charges from 224 to 154, and proceeded on with sentencing. This process perpetuated illegality that goes to the substratum of the conviction and the sentencing. B C

[42] Mr Keppy, learned counsel for the fifth respondent, submitted that on the authority of *Badiaddin Mohd Mahidin & Anor v. Arab Malaysia Finance Bhd* [1998] 2 CLJ 75 and *Hock Hua Bank Bhd v. Sahari Murid* [1980] 1 LNS 92, when a judgment in the High Court has been perfected, a party to a judgment generally cannot re-open the matter finalised in the judgment by seeking to alter it or amend it for the court would be *functus officio*. D

[43] Thus, submitted Mr Keppy, the order dated 12 December 2017 having been pronounced and perfected, it cannot be varied or set aside by the same court on 21 February 2018 as the appeal panel had already *functus officio*. In allowing the prosecution to withdraw 70 charges and thereafter amended the conviction on 224 charges by substituting it with 154 after the appeal panel had *functus officio*, it resulted in two convictions against the applicants, one for 224 charges and the other for 154 charges. E

[44] It was submitted that the amendment of the conviction on 224 charges by substituting it with 154 charges could not have been done pursuant to s. 278 of Criminal Procedure Code; this provision is not applicable as it is not a clerical error nor was it "before the court rise for the day." F

[45] It was submitted that the amendment of the conviction on 12 December 2017 is illegal and it has resulted in manifest injustice to the applicants warranting a review. G

[46] It is pertinent to point out at this juncture that the appeal panel had invited all parties to submit on the issues whether the appeal panel had *functus officio* before allowing the prosecution's application to withdraw the 70 charges and altering the conviction on 224 charges to 154. Hence, there is no breach of natural justice as all parties had been given opportunity to be heard and to advance their argument on the issue of *functus officio*. H

[47] The phrase "*functus officio*" as found in *Words and Phrases Judicially Defined*, 1990 edition, has been defined as follows: I

> It is not clear how the words *functus officio* crept into the order appealed from. *Functus officio means a person who has discharged his duty, or whose office of authority is at an end (see Bedwell v. Wood (1877) 2 QBD 626). Thus, once*

> *a president has convicted a person charged with an offence before him, he is functus officio, and cannot rescind the sentence and retry the case. Similarly, once he has tried a civil action and made an order on the final determination of the dispute between the parties, he is functus officio and cannot rescind his final order and retry the case, or try a subsequent action between the same parties on the same subject matter*. In the present case, the learned President became *functus officio* as regards the earlier action on his refusing the plaintiffs' application for its reinstatement, but he certainly did not become *functus officio* as regards the real dispute between the parties which he never tried, the issue between the parties being whether the plaintiffs were entitled to recover the money which they alleged they had paid to the defendant under a mistake of fact. *New India Assurance Co Ltd v. Karam Singh* [1972] 2 MLJ 26 per Gill JF. (emphasis added)

[48] We take note that Mr Harpal, learned counsel for the third applicant, in the submission on *functus officio* before the appeal panel took the position that a court sitting in a criminal jurisdiction is not *functus officio* until a sentence has been passed, relying on *S v. Recorder of Manchester* [1971] AC 481, wherein the House of Lords opined:

> The primary meaning of the word "conviction" denotes the judicial determination of a case; it is a judgment which involves two matters, a finding of guilt or the acceptance of a plea of guilty followed by a sentence. Until there is such a judicial determination the case is not concluded, the court is not *functus officio* ...

[49] The aforesaid House of Lords' view found approval in *PP v. Jamalul Khair* [1984] 1 LNS 161; [1986] 2 MLJ 371, which held:

> if a court upon all the facts before it thinks it is proper to accept a plea of guilty then the court may permit that plea to be withdrawn and a plea of not guilty accepted at a later stage up to sentence, that is, until final adjudication. The learned President was not *functus officio* in this case until she had passed a sentence or had otherwise finally adjudicated the matter.

[50] In *Datuk Harun Hj Idris v. Officer-in-Charge, Pudu Prison* [1981] 1 LNS 77; [1981] 2 MLJ 72, the appellant had been convicted on three charges under the Prevention of Corruption Act 1961 and the imprisonment sentences passed on these three charges were to run concurrently. Subsequently, he was charged on two charges under the Penal Code (the second case) and was sentenced to imprisonment, the sentences to run concurrently. The warrant of commitment was issued in respect of the second case which was silent on whether the sentences passed on the appellant were concurrent or consecutive to the sentences in the earlier case. On the assumption that the sentences in the two cases were concurrent, the appellant applied for an order of *habeas corpus* claiming that he had been illegally confined in prison from 29 October 1980, as he had already completed serving his sentence as on that date.

[51] The Federal Court in *Harun Idris* case, after pronouncing that the superior court has an inherent jurisdiction to remedy mistakes in its record eg, accidental omission, went on to say:

> (2) The amended order or warrant in this case should not be construed as a review or alteration of the earlier order as the question of sentence remained the same. The question of *functus officio* did not arise in carrying out an administrative function which need not be performed in court e.g. drawing up a warrant of committal.

[52] In *Idris Harun* case, *supra*, reference was made to the case of *AS Naidu v. State of Madhya Pradesh* [1975] Cr LJ 498 where at p. 449 Raino J made the following observations:

> **A judgment in a criminal case consists of the important elements: a finding on the charge and, in the case of conviction, the nature and quantum of sentence**. The exercise of the power under sub-s. (1) of s. 397 does not in any way modify or alter the judgment in the case in which the subsequent sentence has been awarded inasmuch as it does not affect the nature or quantum of sentence. It is a power pertaining to the manner of execution of the subsequent sentence rather than the award of appropriate sentence according to law. Therefore, the direction to make the sentence awarded in a subsequent case to run concurrently with the sentence awarded in a case decided earlier does not amount to review of the judgment in which the subsequent sentence is passed. Since no modification of the judgment itself is involved, the power to make the two sentences run concurrently under sub-s. (1) of s. 397 of the Code can be exercised at any time when the matter is brought to the notice of the court by an application or otherwise. No doubt it would be proper to exercise this power at the time of deciding the case itself on merits whether on appeal or otherwise; but the court cannot be said to have become *functus officio* and as such not competent to exercise the power when the case has already been decided on merits whether on appeal or otherwise. In our view, the power can be exercised even at a later stage, being an independent power conferred by sub-s. (1) of s. 397 of the Code not involving any review of the judgment on merits. (emphasis added)

[53] Mr Shafee, counsel for the first applicant submitted – which we respectfully disagree – that the two stages to a judgment referred to in *Harun Idris* case above are two distinct stages. In the context of the present case, the first stage of finding on the charges was completed when the appeal panel found the applicants guilty on 224 charges and convicted them accordingly. The second stage of sentencing came into play after the conviction and it was deferred upon applications by the applicants for preparation of mitigation.

[54] Mr Shafee's submission above is inconsistent with the provision in s. 173 of Criminal Procedure Code which provides:

> Procedure in summary trials
>
> 173. The following procedure shall be observed by Magistrate in summary trials:

A (a) ... to ... (l)

(m) (i) At the conclusion of the trial, the court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt.

B (ii) If the court finds that the prosecution has proved its case beyond reasonable doubt, the court shall find the accused guilty and he may be convicted on it and the court shall sentence according to law.

Provided ...

C **[55]** The above provision amply shows that in a criminal case, a judge cannot be said to have discharged its judicial function merely upon the finding of guilt on the charges and convicting thereon. His judicial duty is only fully discharged when sentence is passed according to law. Only then can it be said of the judge is *functus officio*. The two important elements of a judgment in a criminal case are performed at two separate stages but they D form an integral part of a judgment.

[56] The interplay of these two stages to a judgment is succinctly described in the English case of *S v. Recorder of Manchester*, *supra*. In that case, on 30 May 1968, the appellant, then aged 16, appeared before a juvenile court E and pleaded guilty to a charge of attempted rape. His plea was accepted and the Magistrate entered a finding of guilt. The hearing was then adjourned until 20 June 1968 for the purpose of inquiry into the appellant's physical and mental condition.

[57] On the adjourned hearing, the appellant was legally represented and F his solicitor, having drawn the attention of the court to the appellant's mental condition and to what were said to be instances of previous spurious confessions on his part, asked that he be allowed to withdraw his plea of guilty and to plea not guilty instead. The Magistrates refused the application on the grounds that they were *functus officio* and had no such authority. They G thereupon proceeded to consider the medical reports and to make a hospital order against the appellant. The appellant appealed.

[58] The issue raised in the appeal before the House of Lords was whether the fact that there is an acceptance of a plea of guilty made by an accused prevents a court from allowing a withdrawal of the plea at any time before H sentence. The House of Lords, in allowing the appeal, held:

> **If Magistrates are trying a case summarily they will not have completed their duty in regard to the case until they either (a) dismiss the case or (b) find the accused guilty and deal with him on that basis**. The finding of guilty may involve reaching a conclusion in regard to disputed or contested facts. It may involve proceeding on the basis of or "accepting" I a confession made in court by way of an unequivocal and unambiguous plea of guilty which so far as the court can tell was intentionally made with full appreciation of all that it involved. **But if there is a finding of**

> **guilty the court will only have advanced part of the way in the discharge of its duty**. There must be a separation in time between the one part of the duty and the other part. If the court has to consider what course to follow in regard to someone who is found to be guilty it will be relevant and generally necessary to have information which will include information as to previous convictions. It would be quite wrong for the court to have such information before the time when there is a finding of guilt. But after such time and before the court has disposed of the case by making whatever order it deems appropriate the court is still engaged upon its duty. **Applying this reasoning to the present case it seems to me that it is wrong to say that at the end of the hearing on May 30, the Magistrates were *functus officio*. They were not. They still had an important part of their duty to perform**. It is because they had such a duty that they remanded the appellant in custody for three weeks. They are not to be criticised for accepting the plea of guilty on the basis of which they were going to decide what to do with the person who had pleaded guilty. They were warranted in what they did. But on June 6, and again on June 20, the case was still before them. The entry made in the register as to what had placed on May 20 (whether made impliedly or expressly by their authority could have no other effect than that of recording the events of May 30. The entries then made have the effect of confirming that the Magistrates had further duties to discharge and that they were not *functus officio*. **When, therefore, on June 6, and June 20, the appellant made the request to withdraw his plea it was, in my view, open to the Magistrates, if for good reasons they saw it, to accede to the request**.
>
> (emphasis added)

[59] Although the above case of *S v. Recorder of Manchester* is a case where the finding of guilty is based on his plea of guilty, the principle pronounced therein applies equally to a finding of guilt after a full trial.

[60] It is undisputed that on 12 December 2017, the appeal panel had reached a stage of their duty of finding the applicants guilty on 224 charges and convicted them accordingly. The first element of the judgment had been performed and satisfied. But that is not a final order as there is still an important part of the duty to perform, that is, to sentence the applicants according to law. That is the reason why the applicants were released on bail pending sentencing. Assuming the applicants had felt aggrieved by the conviction on 224 charges and recourse of appeal were available to them, they could not proceed to appeal after the conviction stage as the court had yet another function to perform, that is, to sentence the applicants. In other words, the appeal panel had not yet *functus officio*.

[61] As for the order dated 12 December 2017 that was drawn out and perfected in connection with the conviction on the 224 charges, suffice it to say that it is merely an administrative act to reflect the events of 12 December 2017. It is not a final order as contended by the applicants.

[62] When it was drawn to the attention of the appeal panel that there were 70 defective charges in the 224 charges stated in the notice of appeal, on the face of such apparent error, what should they do? To declare the appeal proceeding a nullity and ordered a rehearing as suggested by the applicants? Or, should it exercise its inherent power to put right an error?

[63] In *Harun Idris*' case, *supra*, Hashim Yeop A Sani J (as he then was) in addressing the ground whether the court has no inherent jurisdiction to amend its own record in this case, said:

> ... As early as 1885 the Court of Appeal in *Re Wsire* (1885) 30 Ch D 239 considered itself to have inherent jurisdiction over its own orders. It could amend an order subsequently "provided the amendment be made without injustice or on terms which preclude injustice." This is an important power which the court ought to be able to exercise in a proper case in order to put right something which is incorrectly stated and to keep its records in line with the real situation.

[64] In *S v. Recorder of Manchester*, *supra*, it was held:

> If, before the court has completed its task in regard to the case, an application to withdraw the plea is made and if it is made for reasons which the court deems valid and which perhaps it had previously had no opportunity of considering, is the court powerless to accede to it? It would be lamentable if that were so. The court might feel that having regard to the reasons advanced it would wholly wrong to hold a person to previous acknowledgment of guilt. *The desire of a court must be to ensure, so far as possible that only those are punished who are in fact guilty. The duty of a court to clear the innocent must equal or superior in importance to its duty to convict and punish the guilty*. The court will, however, have great concern if any doubt exists as to whether a confession was intended or as to whether it ought really ever to have been made. When, in the present case, the court, on June 20, heard the reasons for the application made to them, they felt, and rightly felt, that the proper course in the interest of justice would be to accede to it. *It would be a grave defect in our law and system if there is some rule which thwarts the course which the interests of justice prompt ... The inherent power is an extraordinary power which ought to be exercised fairly, cautiously and rarely and only when the court considers that the ends of justice require it*.
>
> (emphasis added)

[65] It is our considered view that it will be lamentable if the appeal panel who had not *functus officio*, having been appraised of the 70 defective charges were part of the 224 charges that the applicants had been convicted of, cannot use their inherent jurisdiction to put right the record by amending the conviction on 224 charges to 154. The ends of justice behoves them to put the record straight and to ensure that the applicants were not convicted of non-existing charges. There are good and valid reasons to exercise their inherit jurisdiction to straighten the record and this is done without injustice or on terms that exclude injustice.

[66] It is to be emphasised that the appeal panel did not vary its order of conviction on 12 December 2017 by adding more charges. To the contrary, it removed charges which are found to be defective. This amendment does not cause injustice to nor prejudice the applicants. Far from prejudicing the applicants, it ensures that the applicants would not be wrongly convicted on defective charges and the ends of justice require it.

[67] In *PP v. Cho Sing Koo & Anor* [2015] 4 CLJ 491; [2015] 4 MLJ 689, the Court of Appeal held:

> ... Justice is not better served by acquitting a guilty man than it is to convict an innocent one.

[68] Based on the reasons aforesaid, this ground of complaint must fall to the ground.

Whether Conviction Is Illegal Due To Illegal Appeal Process

[69] Mr Shafee submitted that there is substantial miscarriage of justice and illegal appeal procedure that has tainted the conviction and sentencing thereby rendering the conviction a nullity. This calls for a review to correct injustice, citing *Badan Peguam Malaysia*.

[70] It was submitted that the prosecution is bound by its notice of appeal which stated 224 charges were appealed against. There is a manifest injustice and procedural error as the conviction on 154 is not in accordance with the notice of appeal.

[71] It was submitted that the existence of 70 defective charges in the 224 charges that were preferred against the applicants has resulted in a serious breach of natural justice as the applicants had been deprived of the right to be heard. Consequently, the whole prosecution case is rendered unlawful.

[72] It was submitted that the act of the prosecution in withdrawing 70 charges against the applicants at the appeal stage after the applicants had been convicted contravened arts. 121 and 145 of the Federal Constitution, this has usurped or arrogated the function of the court indicates that the integrity of its earlier decision had been critically undermined, where the process had been corrupted and a wrong result might have been arrived at.

[73] Further, after the withdrawing of 70 charges, it is not clear as to which charges had been dropped and which of 154 had been retained of which the applicants were convicted. The charges against each applicants were "meshed" together.

[74] The court order dated 21 February 2018 on sentence (which is contended as a new material which appears post-conviction and sentencing) does not specify the number of charges against the first applicant. The applicants are languishing in cell not knowing for what offences they had been convicted and sentenced. There is an utter lack of natural justice.

[75] Mr Harpal, learned counsel for the first, second and third applicants submitted that the defective notice of appeal and the defective charges had rendered the conviction on 224 charges illegal. This has resulted in miscarriage of justice which warrant this court to review its earlier decision.

[76] It was submitted that initially 760 AMLA charges were preferred against the applicants. In the midst of the trial, the prosecution withdrew some 500 charges leaving 224 charges. However, the appeal record does not reflect either 760 charges or 224 charges were read, explained and understood by the applicants in the Sessions Court; it also does not show exactly which charges were withdrawn from the initial 760 charges against the applicants.

[77] It was submitted that there is no evidence on record whether the 154 charges (after withdrawal of 70 charges on 21 February 2018) had been read, explained and understood by the applicants and there has been a breach of s. 173 of Criminal Procedure Code.

[78] It was submitted that the applicants were charged with 224 charges but there is only one notice of appeal appealing against the acquittal on 224 charges without specifying the charges brought against the applicants in the Sessions Court. The prosecution ought to have filed separate notices for each charge to enable counsel to address the defect in each charge separately.

[79] It was further submitted that it is impossible to decipher from the record of appeal the exact number of charges preferred against each applicant and how the matter was further complicated by the prosecution who revealed at the sentencing stage the existence of defective charges; how the number of defective charges given by the prosecution could not reconcile with the 224 charges reflected in the notice of appeal and how counsel's own calculation of offence predated the predicated offence in BAFIA between November 2008 to July 2009 cannot tally with the 224 charges reflected in the notice of appeal.

[80] We are constrained to point out that all the issues raised above by Mr Shafee and Mr Harpal are in similar vein and they had been canvassed and ventilated in the previous proceeding.

[81] We need only to refer to Mr Harpal's written submission for the third respondent, ie, third applicant herein, dated 14 February 2018 before the appeal panel (annexed to the affidavit jawapan responden affirmed by Hamdan bin Hamzah on 24 January 2017 filed in the third motion), it is apparent from the said submission that the issues canvassed before the appeal panel are substantially identical to the issues above.

[82] In re-arguing the same issue before this court, it is unmistakably clear that the applicants in moving this court to review the decision of the appeal panel is in fact attempting to reopen and re-exam the final decision made by

the appeal panel after they had heard the similar submission of Mr Harpal. It is the very thing that the court had been cautioned not to position itself to do in the exercise of its inherent jurisdiction to review.

[83] We find that the complaint that the 154 charges were not found on record to have been read and explained to the applicants is devoid of merit. I say so because the applicants did not appear before the Court of Appeal as accused persons and therefore s. 173 of Criminal Procedure Code applies.

[84] It is pertinent to point out that the applicants were represented at the trial in the Sessions Court with Mr Harpal representing the first applicant. This means that counsel does not need to rely on the record of appeal to "decipher" whether there were charges being withdrawn from the original 760 charges leaving 224 charges being preferred against the applicants and whether pleas were taken from the applicants in respect of these 224 charges in accordance with s. 173 of Criminal Procedure Code. If indeed there had been a fundamental breach of s. 173 as alleged, surely counsel would not only have raised it in the submission but would also have affirmed an affidavit to that effect. It is significant that none of counsel for the applicants had filed an affidavit to support the applicants' application herein by raising this complaint.

[85] It is to be noted that the offence under s. 4 of AMLATFA is a stand-alone charge. Every charge is in respect of a particular act of "melibatkan diri secara langsung dalam transaksi yang terlibatkan hasil daripada suatu aktiviti haram iaitu dengan mengeluarkan sekeping cek …". What distinguished the charges are the date and the manner of the contravening transactions.

[86] What had transpired after 12 December 2017 is the discovery that 70 defective AMLATFA charges either due to duplicity or predated the predicated offences in BAFIA. Upon that discovery, we do not agree that the prosecution had usurped the function of the court by appraising the appeal panel of the same and applied to withdraw those 70 defective charges; this is so that the appeal panel could put right on record the error that had occurred since the court had not yet *functus officio*. Further, the withdrawal of the 70 charges would not affect the remaining 154 charges because each of the AMLATFA charges is stand alone.

[87] It is our considered view that the contention of counsel for the applicants that the applicants are in the dark as to what 70 charges had been dropped and what were the remaining charges against them is without merit. We refer to para. 27 of affidavit jawapan responden affirmed by Hamdan bin Hamzah on 24 January 2017 filed in the third motion, in which the deponent stated that the applicants had been informed of the particulars of the 154 charges in the open court:

A 27. Perenggan 38, 43, 44 and 45 Afidavit Sokongan Pemohon dinafikan dan saya menegaskan bahawa butir-butir 154 pertuduhan telah dimaklumkan oleh pihak Responden di dalam mahkamah terbuka kepada Mahkamah Rayuan dan semua pihak pihak yang terlibat berasaskan P315 di mana jumlahnya telah dikurangkan dari 224 pertuduhan kepada 154 pertuduhan dan "money trail" iaitu eksibit P361. Keterangan berhubung
B P361 ini boleh dilihat daripada mukasurat 935 hingga mukasurat 938 jilid 3E Rekod Rayuan. Satu salinan mukasurat 935 hingga mukasurat 938 jilid 3e iaitu keterangan SP42 dan P361 saya tandakan dan sertakan sebagai eksibit "HH-16". Satu Salinan hujahan dan butir-burir 154 pertuduhan tersebut saya sertakan dan masing-masing dikemukakan sebagai eksibit "HH-17" dan "HH-18". Ianya juga bukanlah pertuduhan baru. Oleh yang
C demikian tidak timbul isu kepada permatuhan di bawah seksyen 173 Kanun Tatacara Jenayah.

[88] Exhibit HH-18 (also referred to as lampiran A) has listed out particulars of the 70 defective charges that the prosecution applied to withdraw and which the appeal panel had allowed.

D

[89] We accept the prosecution submission that:

pihak-pihak peguam bela pemohon-pemoon telah membuat semakan terperinci ke atas P315 yang merupakan senarai 224 pertuduhan-pertuduhan yang dihadapi pemohon-pemohon. Daripada P315 inilah
E peguam bela-peguam bela pemohon-pemohon mengenalpasti dan memaklumkan kepada responden berhubung terdapatnya pertuduhan AMLATFA bertarikh sebelum kesalahan prediket, berlaku, pertuduhan pertuduhan yang bertindan dan pertuduhan-pertuduhan yang telah DNAA tetapi masih disenaraikan. Hasil dari initiative bersama pihak pemohon-pemohon dan pihak responden maka pihak responden
F memaklumkan kepada mahkamah rayuan keadaan pertuduhan-pertuduhan yang dimaklumkan oleh pihak pemohon.

[90] For the reasons aforesaid, the complaints raised under this head are clearly unsustainable and does not fall within the exception and special circumstance warranting a review.

G

Failure To Furnish Grounds Of Judgment

[91] Mr Harpal submitted that there was a concurrent finding of fact by the Sessions Court and the High Court.

[92] The Sessions Court found, at the close of the defence case, as follows:

H

Justeru itu, pelanggan-pelanggan yang telah membuat pembayaran kepada GSB merupakan satu bentuk perniagaan jualbeli emas secara terus, yang mana tidak mewujudkan sebarang bentuk pengambilan deposit. Dari keterangan pembelaan jelas menunjukkan CSB menjalankan perniagaan penerimaan wang secara *bona fide* sebagai pembayaran untuk satu kontrak
I penjualan emas seperti yang dibenarkan di bawah proviso kepada seksyen 2(b)(A) ABIK tersebut.

[93] The High Court Judge affirmed the finding of facts and the decision of the Sessions Court.

[94] It was submitted that the Court of Appeal being the final court in appeal from the Sessions Court should be slow in re-opening the concurrent finding of facts and substitute the order of the court below, citing *Bhoginbhai Hirjibhai v. State of Gujarat* AIR 1983 SC 753, which held:

> A concurrent finding of fact cannot be reopened in an appeal by special leave unless it established (1) that the finding is based on no evidence or (2) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or (3) the finding is based and built on inadmissible evidence, which evidence if excluded from vision, would negate the prosecution case or substantially discredit or impair it or (4) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded, or wrongly discarded.

See also, *Herchun Singh & Ors v. PP* [1969] 1 LNS 52; [1969] 1 MLRA 382 and *Reza Malek Zadeh Sahabali v. PP* [2014] 1 LNS 1873; [2014] 3 MLJ 380.

[95] Reliance is also placed on an Indian case of *Muralidhar @ Gidda and Another v. State of Karnataka* AIR 2014 SC 2200, where the Supreme Court stated the principles on which an appellate court will interfere in an appeal on finding of facts by the trial court in the following words:

> In dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its power in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced view of the evidence must not result in the interference by the appellate court in the judgment of the trial court.

[96] It was submitted that the appeal panel convicted the applicants but failed to state either extempore or in writing as to how they arrived at such decision and what were the manifest errors committed by the Sessions Court and the High Court. This resulted in a miscarriage of justice and a denial of natural justice which goes to the substratum of the appeal/review. As such, the review panel ought to set aside the order of the appeal panel and order a rehearing of the applicants' appeal.

[97] Mr Shafee submitted that the post-conduct of the appeal panel judge in failing to furnish the grounds of judgment amount to a new material before the review panel, citing *Kho Jabing*, *supra*.

[98] The purpose of a full reasoned judgment is of course for the parties to the case to know how the court arrived at its decision. Its importance to a party who feels aggrieved by the decision cannot be over emphasised for by it, the party will know what matter had been taken into account or ignored by the court in reaching the decision; this greatly assists the party to address the appellate court at the appeal hearing.

[99] However, a full reasoned judgment plays a less important part in the matter of review. This is because the power of review that is conferred on this court must be exercised only in limited ground and very exceptional circumstance for the purpose of to prevent an injustice being occasioned in the previous decision and to prevent an abuse of the process of the court. The court through plethora of cases had repeatedly cautioned that the power of review should not be used to re-open, to re-examine the earlier decision.

[100] In the circumstance, the failure to furnish a full reasoned judgment does not constitute special and exceptional circumstances warranting a review.

Conclusion

[101] For all the reasons aforesaid, as the applicants have failed to satisfy the court that there is exceptional circumstance to review the conviction, the first and second motions are therefore dismissed.

Review Of Sentence

Third Motion

[102] Mr Shafee submitted that the order on sentence is a fresh material for review. It was submitted that in the specific order pertaining to the first applicant, the number of charges is not mentioned at all as opposed to the order on conviction. As such, the prisoners are being imprisoned for something they are not aware of. This is a breach of natural justice.

[103] As we have stated earlier, based on exh. HH-18 (also referred to as lampiran A) which was produced in the open court, the applicants who were represented had been shown the 70 AMLATFA charges that were withdrawn against them thereby leaving only 154 charges on the conviction.

[104] Mr Harpal contended that the fourth applicant ie, Genneva Sdn Bhd was fined a sum of RM2 million for the BAFIA charge. No AMLATFA charges were preferred against the fourth applicant. Nor was there any application for forfeiture of the assets of the fourth applicant. It was submitted that the order for forfeiture against the fourth applicant is wrong in law and that the appeal panel is not seized with the jurisdiction to make such an order.

[105] We are constrained to point out that the appeal panel did not make order of forfeiture against the fourth applicant, Genneva Sdn Bhd. As such, the contention clearly holds no water.

Fourth Motion

[106] Learned counsel for the fifth applicant submitted that it is not reflected in the sentencing of the appeal panel that they had given due consideration to the fact of this case and the mitigating circumstances, citing *Mohd Abdullah Ang Swee Kang v. PP* [1987] 2 CLJ 405; [1987] CLJ (Rep) 209 and *PP v. Tan Chee Seng & Ors* [2003] 8 CLJ 655.

[107] It was submitted that the fifth applicant was 63 years at the time of conviction and he was convicted of 12 offences under AMLATFA out of 154 charges. He had resigned as director of Genneva Sdn Bhd on 1 April 2009 long before the company was raided on 22 July 2009. Due to his low academic qualification, he did not play an active role in the company before his resignation. In absence of indication that the appeal panel had considered these facts and mitigation in the sentencing, a more lenient sentence ought to be given to the fifth applicant.

[108] It was further submitted that BAFIA formed the predicate offence for AMLATFA and they are reliant on each other. Given that all the offences under BAFIA and AMLA were committed under one similar transaction within the same period of time from November 2008 to 31 March 2009 at the same venue and in the course of business operation of Genneva Sdn Bhd, the imprisonment sentences for offences under AMLATFA and BAFIA should run concurrently and not consecutively, citing the principle established in *Jayaraman & Ors v. PP* [1979] 1 LNS 36; [1979] 2 MLJ 88.

[109] Suffice it to say that the sentencing is the discretion of the court and the fifth applicant has failed to any exceptional circumstance warranting a review of his sentence.

Conclusion

[110] For all the reasons aforesaid, as the applicants have not shown any exceptional circumstance to review the sentences passed on the applicants, it is inevitable that the third and fourth motions ought to be dismissed.